

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 733 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BHARAT HAND WEAVING MILLS

Versus

STATE OF GUJARAT

Appearance:

MR DD VYAS for Petitioner
MR PREMAL JOSHI, AGP for Respondent No. 1
RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: /12/2000

C.A.V. JUDGEMENT

#. The prayer of the petitioner in this writ petition is for writ of mandamus, directing the respondents to treat Annexure-'J' as cancelled and also directing them not to implement or act in furtherance of the said order at Annexure-'J' or not to treat the said land as having been

forfeited or disturbing the possession of the petitioner over the said land.

#. The brief facts are that the petitioner is a partnership firm. The petitioner firm applied for grant of 4-acres land out of Government waste land of survey no.111 situated in Village Madhapar, Taluka & District Rajkot, for establishing an industry. Application for that purpose was made to the respondent no.2. After following due procedure, the respondent no.2 granted 4-acres land of survey no.111 measuring 19,328 sq.yards. Terms and conditions of allotment were imposed in order dated 4-5-1970. The petitioner firm was required to pay Rs.10,800=00 in all at the rate of Rs.2,700=00 per acre towards price of the land vide Annexure-'A'. The petitioner paid the aforesaid amount on 30-7-1970 and thereafter, possession of the said land was handed over to the petitioner on 11-8-1970. However, the respondent no.2, under his order dated 14-8-1980, cancelled the aforesaid order of 4-5-1970 and directed refund of Rs.10,800=00 to the petitioner vide Annexure-'B'. In the mean time, the Urban Land Ceiling and Regulations Act, 1976 came into force and the petitioner submitted declaration as required under sec.6(1) of the said Act. Feeling aggrieved from the order dated 14-8-1980 Annexure-'B', the petitioner filed a revision before Special Secretary to the Government of Gujarat, Revenue Department. Meanwhile, Taluka Development Officer, Rajkot had issued a notice dated 26-5-1981 against the petitioner calling upon it to pay the amounts of land revenue, etc. vide Annexure-'C'. By an order dated 24-10-1981, the Special Secretary directed that the revision application be returned to the petitioner firm as he had no power to decide the revision vide Annexure-'D'. Thereafter, Mamlatdar, Rajkot served a notice on 12-2-1982 to the petitioner firm calling upon it to handover the possession of the land in question. Similarly, by notice dated 14-4-1983, Taluka Development Officer, Rajkot called upon the petitioner to pay Rs.15,399=65 Ps. towards land revenue, local fund, education cess, etc. Annexure-'E'. In Annexure-'E', the Taluka Development Officer threatened the petitioner that, if the amount was not paid, the land will be attached. It appears that, thereafter, by order dated 12-6-1984, the State Government, through its Revenue Department, cancelled the order of the respondent no.2 dated 14-8-1980 Annexure-'B' and restored the original order of grant dated 5-5-1970 Annexure-'A'. Pursuant to this order, the respondent no.2 passed an order on 25-7-1974 cancelling the order Annexure-'B' and restored Annexure-'A' to the petition vide Annexure-'F'. Copy of

the order was given to the Official Liquidator of M/s. Bharat Hand Weaving Mills Pvt. Ltd. It is alleged that there was some confusion in the mind of the authorities because the petitioner is a firm and M/s. Bharat Hand Weaving Mills is distinct entity and is a Private Limited Company. As such, the Special Civil Application No. 6580/85 was filed on 11-3-1985 praying that, order Annexure-'F' was passed against the Limited Company and not against the petitioner. The said Special Civil Application was decided on 5-12-1985 Annexure-'G'. Subsequently, some difficulty arose because, eventhough the land in question was granted for industrial purpose by the respondent no.2, the said land was proposed to be placed in the green zone; meaning thereby that, the land could be used only for agriculture under the Development Plan. Objections were invited and subsequently, the Government decided that since the land was granted for industrial purpose, it could not be placed in agricultural zone. The petitioner received letter dated 11-4-1988 from the respondent no.2, wherein it was mentioned that the land was liable to be forfeited to the Government. Order was passed by the respondent no.2 on 11-4-1988 informing the petitioner that the land was liable to be forfeited and if the petitioner has any objection, he may go to a court of law vide Annexure-'J'. It is this order which is under challenge in this writ petition.

#. The grievance of the petitioner is that, while passing this order, the respondent no.2 has treated the applications of the petitioner dated 11-1-1988 and 15-1-1988 as if the petitioner prayed for transfer of the land in the name of the petitioner, which was factually incorrect. Since the land was granted in favour of the petitioner vide Annexure-'A', there was no question of transferring the land in the name of the petitioner. Further grievance of the petitioner is that, no grounds are given in Annexure-'J' as to how the said land is liable to be forfeited.

#. Sufficient time was given to the respondent to file counter affidavit. This petition was admitted on 23-6-1994 but, no counter affidavit has been filed despite affording sufficient opportunity to the respondent to file counter affidavit. As such, Shri DD Vyas for the petitioner and Shri Premal Joshi for the respondents were heard and the Annexures were examined.

#. The objection of the learned AGP Shri Joshi was that the petitioner has concealed full facts and has not disclosed that the company was under liquidation.

However, the narration of facts above will disclose that there was no concealment of facts by the petitioner. The petitioner has clearly averred in para-15 of the petition that there was confusion in the mind of respondent no.2, wherein he has treated the petitioner firm as M/s.Bharat Hand Weaving Mills. According to the petitioner, this Mill is a Private Limited Company, which is distinct entity and can not be equated with the petitioner's firm. It is further averred in the petition that, for removal of this confusion, exchange of correspondence took place between the petitioner and the respondent no.2. Consequently, the writ petition can not be dismissed on grounds of concealment of facts.

#. Coming to the merits of the petition, Annexure-'A' shows that, on 4-5-1970, 4-acres land of survey no.111 was granted/allotted to the petitioner. Annexure-'B' dated 14-8-1980 shows that this allotment was cancelled on the ground that the land was covered under agricultural zone. Proposal was sent to the Government for change of user but, the said proposal was rejected and it was intimated that no construction be made over the land in question. Against the order dated 14-8-1980, the petitioner preferred a revision before the Secretary (Appeals), Revenue Department but, this revision application was returned to the petitioner on the ground that the Secretary (Appeals) had no power and authority to hear the revision vide Annexure-'D'. Annexure-'F' dated 25-7-1984 shows that the order dated 14-8-1980 cancelling the allotment made in favour of the petitioner was withdrawn by the Collector, Rajkot. It was not an arbitrary order of the Collector. Para-4 of this order shows that the Collector acted in accordance with the Memorandum No.JMM/5382/3796/A dated 12-6-1984 issued by the Revenue Department of the Government, where it was ordered to withdraw the cancellation of allotment in favour of the petitioner forthwith.

#. If the order of cancellation of allotment was withdrawn then the action of issuing notice Annexure-'J' becomes illegal and unauthorized.

#. Shri Joshi has, however, pointed out that the action of the petitioner is illegal, in as much as, the land was not allotted to it for industrial purpose and it should not have used the land for industrial purpose, in as much as, it was situated in agricultural zone. This contention can be repelled by observations of the Collector made in Annexure-'F'. Here, it is mentioned in the opening that the land was allotted for industrial purpose and price was to be recovered as per N.A.

Assessment Rules. It will, thus, mean that N.A. permission was granted. Consequently, on this objection also, the writ petition can not be dismissed.

#. So far as Annexure-'J', which is under challenge in this writ petition is concerned, it can be said that this is a vague communication without any reasons and grounds for confiscation of land allotted to the petitioner in favour of the Government. Once the land was allotted to the petitioner on 4-5-1970 vide Annexure-'A' and order of cancellation dated 14-8-1980 was withdrawn vide Annexure-'F' on 25-7-1984 and since there is no other order withdrawing allotment or cancelling the allotment in favour of petitioner, the notice Annexure-'J' becomes not only arbitrary and unreasoned but also illegal. If there was any material before the authority, intimating the petitioner that the land allotted to him was again liable to be confiscated to the Government, those materials or reasons should have been given. The direction that, if the petitioner wants to make any objection he is required to take appropriate steps in appropriate court, is also uncalled for and illegal.

##. Consequently, for the reasons stated above, Annexure-'J' is liable to be quashed. The prayer for writ of mandamus made in the writ petition is misconceived. If Annexure-'J' is set aside then no further direction is required to be made and no mandamus is required to be issued.

##. For the reasons stated above, the writ petition succeeds and is hereby allowed. Direction contained in Annexure-'J' dated 11-4-1988 is hereby quashed and set aside with no order as to costs.

Dated : /12/2000. [D.C. Srivastava, J.]

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